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KELLY LOWRY & KELLEY, LLP
6320 CANOGA AVENUE
SUITE 1650
WOODLAND HILLS, CA 91367

EXAMINER	
STAICOVICI, STEFAN	
ART UNIT	**PAPER NUMBER**
1732	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/701,052	BYRNE, CHARLES A.	
	Examiner	Art Unit	
	Stefan Staicovici	1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's response filed July 22, 2005 has been entered. Claims 1-25 are pending in the instant application.

Terminal Disclaimer

2. The terminal disclaimer filed on July 22, 2005 disclaiming the terminal portion of any patent granted on this application that would extend beyond the expiration date of US Application 10/414,630 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527).

Levin *et al.* ('252) teach the basic claimed process for making a pet chew toy including, injection or extrusion molding a pet chew toy having 50-95% polymeric material, *i.e.*, rubber, and fiber material, *i.e.*, polyester or nylon (see col. 4, line 14 and 56-66 and, col. 5, lines 27-55).

Regarding claim 1, although Levin *et al.* ('252) teach a rubber/fiber composition, Levin *et al.* ('252) do not teach placing a fiber material between rubber sheets. However, forming a rubber/fiber composition by rolling two sheets of rubber onto a layer of synthetic fibers is well known as evidenced by Kamiura *et al.* ('527) who teach forming a rubber/fiber composition by rolling two sheets of rubber (4a, 4b) onto a layer of synthetic fibers (1) (see col. 3, lines 40-55 and Figure 1) to form a fiber reinforced rubber sheet, cutting said sheet into strips and molding said strips. Therefore, it would have been obvious for one of ordinary skill in the art to have formed a rubber/fiber composition by rolling two sheets of rubber onto a layer of synthetic fibers as taught by Kamiura *et al.* ('527) to be molded in the process Levin *et al.* ('252) because, Kamiura *et al.* ('527) teach an efficient process for making a rubber/fiber composition whereas Levin *et al.* ('252) require a rubber/fiber composition, hence requiring the teachings of Kamiura *et al.* ('527) to function as described.

In regard to claim 5, Levin *et al.* ('252) teach a pet chew toy having 50-95% polymeric material, *i.e.*, rubber, and fiber material, *i.e.*, polyester or nylon (see col. 4, line 14 and 56-66 and, col. 5, lines 27-55).

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Sasson, Jr. (US Patent No. 6,341,771 B1).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach the basic claimed process as described above.

Regarding claim 2, although Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach injection molding a rubber material, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) do not teach forming rubber sheets and cutting said rubber sheets into strips. However, forming rubber sheets and cutting said sheets into strips in an injection molding process of rubber is well known as evidenced by Sasson, Jr. ('771) who specifically teaches that injection molding of rubber includes, mixing rubber material, forming a rubber sheet, cutting said rubber sheet into strips and loading said strips into an injection molding machine (see col. 1, lines 15-33). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a rubber sheet and cut said sheet into strips as taught33 by Sasson, Jr. ('771) and, fed said strips to an injection molding machine in the process Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because, Sasson, Jr. ('771) specifically teaches that injection molding of rubber includes such steps, whereas Levin *et al.* ('252) teach injection molding a rubber material, hence requiring the steps of Sasson, Jr. ('771) to function as described.

6. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Willinger (US Patent No. 6,622,659 B2).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach the basic claimed process as described above.

Regarding claims 3-4, although Levin *et al.* ('252) teach a rubber material, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) do not teach a tire rubber material mixed with carbon black. Willinger ('659) teaches a pet chew toy made from a tire rubber material mixed with

carbon black (see col. 6, lines 36-43). Therefore, it would have been obvious for one of ordinary skill in the art to have used a tire rubber material mixed with carbon black as taught by Willinger ('659) to make the pet chew toy by the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because, Willinger ('659) teaches that such a material provides for hot and cold resistance and resilience approaching that of natural rubber, hence providing for an improved product and also because, Levin *et al.* ('252) teach a rubber material and both references teach similar end-products that require similar properties and characteristics.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view Axelrod *et al.* (US Patent No. 6,586,027 B2).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach the basic claimed process as described above.

Regarding claim 6, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) do not teach compression molding (heat and pressure). However, Axelrod *et al.* ('027) teach that in making an animal chew toy injection molding and compression molding are well known equivalent alternatives. Therefore, it would have been obvious for one of ordinary skill in the art to have used compression molding as an equivalent alternative as taught by Axelrod *et al.* ('027) to injection molding of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because Axelrod *et al.* ('027) specifically teach that in making an animal chew toy injection molding and compression molding are well known equivalent alternatives. Further, it is submitted that compression molding a rubber material includes both heat and pressure.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Sasson, Jr. (US Patent No. 6,341,771 B1) and Axelrod *et al.* (US Patent No. 6,586,027 B2).

Levin *et al.* ('252) teach the basic claimed process for making a pet chew toy including, injection or extrusion molding a pet chew toy having 50-95% polymeric material, *i.e.*, rubber, and fiber material, *i.e.*, polyester or nylon (see col. 4, line 14 and 56-66 and, col. 5, lines 27-55).

Regarding claim 14, although Levin *et al.* ('252) teach a rubber/fiber composition, Levin *et al.* ('252) do not teach placing a fiber material between rubber sheets. However, forming a rubber/fiber composition by rolling two sheets of rubber onto a layer of synthetic fibers is well known as evidenced by Kamiura *et al.* ('527) who teach forming a rubber/fiber composition by rolling two sheets of rubber (4a, 4b) onto a layer of synthetic fibers (1) (see col. 3, lines 40-55 and Figure 1) to form a fiber reinforced rubber sheet, cutting said sheet into strips and molding said strips. Therefore, it would have been obvious for one of ordinary skill in the art to have formed a rubber/fiber composition by rolling two sheets of rubber onto a layer of synthetic fibers as taught by Kamiura *et al.* ('527) to be molded in the process Levin *et al.* ('252) because, Kamiura *et al.* ('527) teach an efficient process for making a rubber/fiber composition whereas Levin *et al.* ('252) require a rubber/fiber composition, hence requiring the teachings of Kamiura *et al.* ('527) to function as described.

Further regarding claim 14, although Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach injection molding a rubber material, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) do

not teach forming rubber sheets and cutting said rubber sheets into strips. However, forming rubber sheets and cutting said sheets into strips in an injection molding process of rubber is well known as evidenced by Sasson, Jr. ('771) who specifically teaches that injection molding of rubber includes, mixing rubber material, forming a rubber sheet, cutting said rubber sheet into strips and loading said strips into an injection molding machine (see col. 1, lines 15-33). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a rubber sheet and cut said sheet into strips as taught by Sasson, Jr. ('771) and, fed said strips to an injection molding machine in the process Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because, Sasson, Jr. ('771) specifically teaches that injection molding of rubber includes such steps, whereas Levin *et al.* ('252) teach injection molding a rubber material, hence requiring the steps of Sasson, Jr. ('771) to function as described.

In further regard to claim 14, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) do not teach compression molding (heat and pressure). However, Axelrod *et al.* ('027) teach that in making an animal chew toy injection molding and compression molding are well known equivalent alternatives. Therefore, it would have been obvious for one of ordinary skill in the art to have used compression molding as an equivalent alternative as taught by Axelrod *et al.* ('027) to injection molding of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) because Axelrod *et al.* ('027) specifically teach that in making an animal chew toy injection molding and compression molding are well known equivalent alternatives. Further, it is submitted that compression molding a rubber material includes both heat and pressure.

In regard to claim 16, Levin *et al.* ('252) teach a pet chew toy having 50-95% polymeric material, *i.e.*, rubber, and fiber material, *i.e.*, polyester or nylon (see col. 4, line 14 and 56-66 and, col. 5, lines 27-55).

9. Claims 15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Sasson, Jr. (US Patent No. 6,341,771 B1), Axelrod *et al.* (US Patent No. 6,586,027 B2) and Willinger (US Patent No. 6,622,659 B2).

Levin *et al.* ('252) teach the basic claimed process for making a pet chew toy including, injection or extrusion molding a pet chew toy having 50-95% polymeric material, *i.e.*, rubber, and fiber material, *i.e.*, polyester or nylon (see col. 4, line 14 and 56-66 and, col. 5, lines 27-55).

Regarding claim 21, although Levin *et al.* ('252) teach a rubber/fiber composition, Levin *et al.* ('252) do not teach placing a fiber material between rubber sheets. However, forming a rubber/fiber composition by rolling two sheets of rubber onto a layer of synthetic fibers is well known as evidenced by Kamiura *et al.* ('527) who teach forming a rubber/fiber composition by rolling two sheets of rubber (4a, 4b) onto a layer of synthetic fibers (1) (see col. 3, lines 40-55 and Figure 1) to form a fiber reinforced rubber sheet, cutting said sheet into strips and molding said strips. Therefore, it would have been obvious for one of ordinary skill in the art to have formed a rubber/fiber composition by rolling two sheets of rubber onto a layer of synthetic fibers as taught by Kamiura *et al.* ('527) to be molded in the process Levin *et al.* ('252) because, Kamiura *et al.* ('527) teach an efficient process for making a rubber/fiber composition whereas

Levin *et al.* ('252) require a rubber/fiber composition, hence requiring the teachings of Kamiura *et al.* ('527) to function as described.

Further regarding claim 21, although Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach injection molding a rubber material, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) do not teach forming rubber sheets and cutting said rubber sheets into strips. However, forming rubber sheets and cutting said sheets into strips in an injection molding process of rubber is well known as evidenced by Sasson, Jr. ('771) who specifically teaches that injection molding of rubber includes, mixing rubber material, forming a rubber sheet, cutting said rubber sheet into strips and loading said strips into an injection molding machine (see col. 1, lines 15-33). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a rubber sheet and cut said sheet into strips as taught by Sasson, Jr. ('771) and, fed said strips to an injection molding machine in the process Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because, Sasson, Jr. ('771) specifically teaches that injection molding of rubber includes such steps, whereas Levin *et al.* ('252) teach injection molding a rubber material, hence requiring the steps of Sasson, Jr. ('771) to function as described.

Further regarding claim 21, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) do not teach compression molding (heat and pressure). However, Axelrod *et al.* ('027) teach that in making an animal chew toy injection molding and compression molding are well known equivalent alternatives. Therefore, it would have been obvious for one of ordinary skill in the art to have used compression molding as an equivalent alternative as taught by Axelrod *et al.* ('027) to injection molding of Levin *et al.* ('252) in view

of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) because Axelrod *et al.* ('027) specifically teach that in making an animal chew toy injection molding and compression molding are well known equivalent alternatives. Further, it is submitted that compression molding a rubber material includes both heat and pressure.

Further regarding claim 21, although Levin *et al.* ('252) teach a rubber material, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) do not teach a tire rubber material mixed with carbon black. Willinger ('659) teaches a pet chew toy made from a tire rubber material mixed with carbon black (see col. 6, lines 36-43). Therefore, it would have been obvious for one of ordinary skill in the art to have used a tire rubber material mixed with carbon black as taught by Willinger ('659) to make the pet chew toy by the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) because, Willinger ('659) teaches that such a material provides for hot and cold resistance and resilience approaching that of natural rubber, hence providing for an improved product and also because, Levin *et al.* ('252) teach a rubber material and both references teach similar end-products that require similar properties and characteristics.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Edwards (US Patent No. 4,513,014).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach the basic claimed process as described above.

Regarding claim 12, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) do not teach adding a scent to the rubber material. Edwards ('014) teaches a polyurethane pet chew toy having a liquid scent added prior to molding said pet chew toy (see Abstract, col. 6, lines 28-30 and col. 7, lines 43-58). Therefore, it would have been obvious for one of ordinary skill in the art to have added a scent as taught by Edwards ('014) to make the pet chew toy by the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because, Edwards ('014) teaches that adding a scent provides for improved taste/aroma that is pleasing to the pet, hence providing for an improved product and also because, all references teach similar end-products that require similar properties and characteristics.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Sasson, Jr. (US Patent No. 6,341,771 B1), Axelrod *et al.* (US Patent No. 6,586,027 B2) and Edwards (US Patent No. 4,513,014).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) teach the basic claimed process as described above.

Regarding claim 20, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) do not teach adding a scent to the rubber material. Edwards ('014) teaches a polyurethane pet chew toy having a liquid scent added prior to molding said pet chew toy (see Abstract, col. 6, lines 28-30 and col. 7, lines 43-58). Therefore, it would have been obvious for one of ordinary skill in the art to have added a scent as taught by Edwards ('014) to make the pet chew toy by the process of Levin *et al.* ('252) in view of

Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) because, Edwards ('014) teaches that adding a scent provides for improved taste/aroma that is pleasing to the pet, hence providing for an improved product and also because, all references teach similar end-products that require similar properties and characteristics.

12. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Sasson, Jr. (US Patent No. 6,341,771 B1), Axelrod *et al.* (US Patent No. 6,586,027 B2), Willinger (US Patent No. 6,622,659 B2) and Edwards (US Patent No. 4,513,014).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) teach the basic claimed process as described above.

Regarding claim 25, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) do not teach adding a scent to the rubber material. Edwards ('014) teaches a polyurethane pet chew toy having a liquid scent added prior to molding said pet chew toy (see Abstract, col. 6, lines 28-30 and col. 7, lines 43-58). Therefore, it would have been obvious for one of ordinary skill in the art to have added a scent as taught by Edwards ('014) to make the pet chew toy by the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) because, Edwards ('014) teaches that adding a scent provides for improved taste/aroma that is pleasing to the pet, hence providing for an improved product and also

because, all references teach similar end-products that require similar properties and characteristics.

13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Markham *et al.* (US Patent No. 4,802,444).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach the basic claimed process as described above.

Regarding claim 13, although Levin *et al.* ('252) teach a bone-shaped pet chew toy, Levin *et al.* ('252) do not teach a tire configuration. However, a tire shaped pet chew toy is well known as evidenced by Markham *et al.* ('444) who teach an injection molded rubber pet chew toy having a ring (tire) configuration (see col. 1, lines 10-16). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a ring shaped pet chew toy as taught by Markham *et al.* ('444) by the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because, Markham *et al.* ('444) teach that such a shape is known to exist in the marketplace as an equivalent alternative to a bone-shaped toy and also because, both Levin *et al.* ('252) and Markham *et al.* ('444) teach similar end-products that require similar properties and characteristics.

14. Claims 7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Markham *et al.* (US Patent No. 5,904,118).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach the basic claimed process as described above.

Regarding claims 7 and 9-11, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) do not teach a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy. Markham *et al.* ('118) teach a molded pet chew toy having a rope attached and a buoyant insert made from a closed cell foam inserted into a cavity of said toy (see col. 2, lines 6-16 and Figure 6). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy as taught by Markham *et al.* ('118) using the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because, Markham *et al.* ('118) teach that such a pet toy provides for an improved product by permitting increased visibility when pets play in the water.

15. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Sasson, Jr. (US Patent No. 6,341,771 B1), Axelrod *et al.* (US Patent No. 6,586,027 B2) and Markham *et al.* (US Patent No. 5,904,118).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) teach the basic claimed process as described above.

Regarding claims 17 and 19, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) do not teach a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy.

Markham *et al.* ('118) teach a molded pet chew toy having a rope attached and a buoyant insert made from a closed cell foam inserted into a cavity of said toy (see col. 2, lines 6-16 and Figure 6). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy as taught by Markham *et al.* ('118) using the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) because, Markham *et al.* ('118) teach that such a pet toy provides for an improved product by permitting increased visibility when pets play in the water.

16. Claims 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Sasson, Jr. (US Patent No. 6,341,771 B1), Axelrod *et al.* (US Patent No. 6,586,027 B2), Willinger (US Patent No. 6,622,659 B2) and Markham *et al.* (US Patent No. 5,904,118).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) teach the basic claimed process as described above.

Regarding claims 22 and 24, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) do not teach a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy. Markham *et al.* ('118) teach a molded pet chew toy having a rope attached and a buoyant insert made from a closed cell foam inserted into a cavity of said toy (see col. 2, lines 6-

16 and Figure 6). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy as taught by Markham *et al.* ('118) using the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) because, Markham *et al.* ('118) teach that such a pet toy provides for an improved product by permitting increased visibility when pets play in the water.

17. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Markham (US Patent No. 5,832,877).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) teach the basic claimed process as described above.

Regarding claim 8, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) do not teach a pet chew toy having an animal treat retained in a cavity therein. Markham ('877) teaches an animal chew toy having animal treats retained in a cavity therein (see Abstract and Figure 3). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having an animal treat retained in a cavity therein as taught by Markham ('877) using the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) because, Markham *et al.* ('118) teach that such a pet toy provides for increased life by allowing the pet to use said toy for an increased period of time, hence providing for an improved product.

18. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further

view of Sasson, Jr. (US Patent No. 6,341,771 B1), Axelrod *et al.* (US Patent No. 6,586,027 B2) and Markham (US Patent No. 5,832,877).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) teach the basic claimed process as described above.

Regarding claim 18, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) do not teach a pet chew toy having an animal treat retained in a cavity therein. Markham ('877) teaches an animal chew toy having animal treats retained in a cavity therein (see Abstract and Figure 3). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having an animal treat retained in a cavity therein as taught by Markham ('877) using the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771) and Axelrod *et al.* ('027) because, Markham *et al.* ('118) teach that such a pet toy provides for increased life by allowing the pet to use said toy for an increased period of time, hence providing for an improved product.

19. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin *et al.* (US Patent No. 6,672,252 B2) in view of Kamiura *et al.* (US Patent No.4,605,527) and in further view of Sasson, Jr. (US Patent No. 6,341,771 B1), Axelrod *et al.* (US Patent No. 6,586,027 B2), Willinger (US Patent No. 6,622,659 B2) and Markham (US Patent No. 5,832,877).

Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) teach the basic claimed process as described above.

Regarding claim 23, Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) do not teach a pet chew toy having an animal treat retained in a cavity therein. Markham ('877) teaches an animal chew toy having animal treats retained in a cavity therein (see Abstract and Figure 3). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having an animal treat retained in a cavity therein as taught by Markham ('877) using the process of Levin *et al.* ('252) in view of Kamiura *et al.* ('527) and in further view of Sasson, Jr. ('771), Axelrod *et al.* ('027) and Willinger ('659) because, Markham *et al.* ('118) teach that such a pet toy provides for increased life by allowing the pet to use said toy for an increased period of time, hence providing for an improved product.

Response to Remarks and to the Declaration filed under 37 CFR 1.131

20. Applicant's remarks filed July 22, 2005 have been considered.

21. Applicant argues that "[T]he Declaration of Charles A. Byrne, the inventor of the instant application, demonstrates that the subject matter of Levin et al. was well-known to the Applicant of the instant application as the Applicant had conceived of and been developing this subject matter prior to the Levin et al. filing date" (see page 8 of the response filed 7/22/05).

22. It is noted that the evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Levin *et al.* ('252) reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a

problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

23. Further, it is noted that under MPEP §715.02, "[T]he 37 CFR 1.131 affidavit or declaration must establish possession of either the *whole* invention claimed or something *falling within* the claim (such as a species of a claimed genus), in the sense that the claim as a whole reads on it." (emphasis added) In re Tanczyn, 347 F.2d 830, 146 USPQ 298 (CCPA 1965). Furthermore, it is noted that "the affidavit or declaration showing must still establish possession of the invention (i.e., the basic inventive concept) and not just of what one reference (in a combination of applied references) happens to show, if that reference does not itself teach the basic inventive concept." In re Spiller, 500 F.2d 1170, 182 USPQ 614 (CCPA 1974).

In this case, the Declaration filed by Applicant refers mostly to the structure of the part being manufactured, a rubber tire with or without a metallic rim used as a pet chew toy. As such, the Declaration filed by Applicant does not show the process by which said pet chew toy has been manufactured, whereas the instant claimed invention is drawn to a process of manufacturing. Hence, the Declaration is not commensurate in scope with the claimed invention. Furthermore, because the Declaration does not establish the basic inventive concept, it is submitted that the Declaration does not establish that Applicant had possession of the invention prior to the teachings of Levin *et al.* ('252).

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Staicovici, Ph.D. whose telephone number is (571) 272-1208. The examiner can normally be reached on Monday-Friday 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni, can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stefan Staicovici, PhD

Primary Examiner 10/3/05

AU 1732

October 3, 2005